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Sentence

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

4 v.

11 CR 576 (WHP)

5 JOSHUA MEREGILDO, MELVIN  
6 COLON, and EARL PIERCE,

7 Defendants.

8 -----x

9 UNITED STATES OF AMERICA,

10 v.

11 Cr. 758 (WHP)

11 JOSHUA MEREGILDO,

12 Defendant.

13 -----x

14 New York, New York  
15 September 20, 2013  
16 2:00 p.m.

17 Before:

18 HON. WILLIAM H. PAULEY III,

19 District Judge

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## APPEARANCES

PREET BHARARA

United States Attorney for the  
Southern District of New York

NOLA HELLER

SANTOSH ARAVIND

Assistant United States Attorneys

WINSTON LEE

Attorneys for Defendant Meregildo

MITCHELL DINNERSTEIN

ANTHONY CECUTTI

Attorneys for Defendant Colon

FLORIAN MIEDEL

AARON MYSLIWIEC

Attorneys for Defendant Pierce

ALSO PRESENT:

Special Agent Patrick Collins, ATF

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1 (In open court)

2 (Case called)

3 THE DEPUTY CLERK: United States of America v. Joshua  
4 Meregildo, Melvin Colon, and Earl Pierce, under indictment 11  
5 Cr. 576 and the United States of America v. Joshua Meregildo  
6 under 11 Cr. 758.

7 Appearances for the government.

8 MR. ARAVIND: Good afternoon, your Honor, Santosh  
9 Aravind and Nola Heller for government. With us at counsel  
10 table is Special Agent Pat Collins with the ATF.

11 THE COURT: Good afternoon.

12 MR. LEE: For Joshua Meregildo, Winston Lee.

13 Good afternoon.

14 THE COURT: Good afternoon.

15 MR. LEE: Mr. Meregildo is seated in the jury box.

16 THE COURT: Good afternoon, Mr. Lee. And I note  
17 Mr. Meregildo's presence.

18 MR. DINNERSTEIN: Mitchell Dinnerstein and Anthony  
19 Cecutti for Mr. Colon, who is sitting shackled in the jury box.

20 THE COURT: Good afternoon, Mr. Dinnerstein.

21 And I note the presence of Mr. Colon.

22 MR. MIEDEL: Good afternoon, your Honor. Florian  
23 Miedel and Aaron Mysliwiec for Earl Pierce.

24 THE COURT: Good afternoon, Mr. Meidel, and I note the  
25 presence of Mr. Pierce in the jury box.

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1           These matters are on for sentencing.

2           Are the parties ready to proceed?

3           MR. ARAVIND: Yes, your Honor.

4           MR. LEE: Mr. Meregildo is, your Honor.

5           MR. DINNERSTEIN: Yes, your Honor.

6           MR. MIEDEL: Yes, your Honor.

7           THE COURT: Mr. Lee, have you reviewed with your  
8 client the presentence investigation report?

9           MR. LEE: We have reviewed it, your Honor.

10          THE COURT: All right.

11          Are there any factual matters in the report that you  
12 believe warrant modification or correction?

13          MR. LEE: Judge, other than the issues that have been  
14 outlined by the Court that are open at this point, we do not.

15          THE COURT: All right. I will be addressing those  
16 shortly.

17          In fact, let me explain to counsel how we are going to  
18 proceed today.

19          First, I'm going to address any presentence factual  
20 issues in the reports; and, based upon the parties'  
21 submissions, that only relates to Mr. Pierce.

22          Then I am going to deliver to you my guidelines  
23 calculations based upon the order that I submitted earlier, and  
24 the submissions that I have received from all the parties in  
25 response to that order.

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1           Thereafter, if any victim wishes to address the Court,  
2 I will hear from them.

3           Then I will hear remarks from each of the defense  
4 counsel concerning their clients, followed by remarks from the  
5 government's table.

6           Finally, I will hear from any defendant who wishes to  
7 address the Court before sentence is imposed.

8           Then we will take a very short break and thereafter I  
9 will pronounce sentence.

10          So, Mr. Dinnerstein, are there any factual matters set  
11 forth in the report for Mr. Colon that you believe warrant  
12 modification or correction?

13          MR. DINNERSTEIN: No, your Honor, just the letter that  
14 I previously sent to the Court after your order.

15          THE COURT: Very well.

16          Finally Mr. Miedel.

17          MR. MIEDEL: Yes, your Honor. I had submitted an  
18 objection letter to the probation department which I attached  
19 to my sentencing submission to you.

20          THE COURT: I am prepared to rule on those factual  
21 matters.

22          MR. MIEDEL: OK.

23          THE COURT: First, in paragraph 52, Mr. Pierce objects  
24 to being referred to as a "lieutenant" as well as the notion  
25 that he ran the organization with Mr. Harrison.

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1           This Court agrees with Mr. Pierce's objection and,  
2 accordingly will be modifying paragraph 52 to begin, "Harrison  
3 ran a narcotics trafficking organization and racketeering  
4 enterprise which Mr. Pierce was an associate of that sold" and  
5 go on from there.

6           Second, Mr. Pierce objects in paragraph 53 to the  
7 conclusion that "GFC members" were "selling for Harrison and  
8 Pierce."

9           This Court finds that objection is also founded and  
10 will adopt the revision proposed by Mr. Pierce's counsel,  
11 namely, that GFC members selling for the enterprise, and then  
12 the language in the report will continue from there.

13           Finally, Mr. Pierce objects to certain statements in  
14 paragraph 60 of the presentence report, specifically, to the  
15 conclusion that on or about July 25, 2010, Pierce and others  
16 intentionally and knowingly murdered and aided and abetted the  
17 murder of Jason Correa. Because he was acquitted of this  
18 conduct at trial, Pierce is correct about that as well.  
19 Accordingly, I am modifying paragraph 60, and it will read as  
20 follows: On or about July 25, 2010, in the Southern District  
21 of New York, members of the racketeering enterprise referred to  
22 in the indictment as the Courtlandt Avenue Crew intentionally  
23 and knowingly murdered and aided and abetted the murder of  
24 Jason Correa in the vicinity of 681 Courtlandt Avenue, Bronx,  
25 New York, in violation of New York Penal Law, Sections 20.00

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1 and 125.25, in that, with the intent to cause the death of  
2 Correa one of the members of the Courtlandt Avenue Crew caused  
3 the death of Correa. Pierce was charged with this murder, but  
4 was acquitted on this count at trial. However, he was  
5 convicted of conspiring to murder rival narcotics dealers,  
6 including Jason Correa -- in furtherance of the racketeering  
7 enterprise. And the result of that conspiracy was the  
8 intentional murder of Jason Correa.

9 Are there any other factual matters that remain  
10 unresolved?

11 MR. MIEDEL: No, your Honor. Are you going to direct  
12 the probation department to reissue a report?

13 THE COURT: I am.

14 MR. MIEDEL: OK. Thank you.

15 THE COURT: I am, for reasons that will become clear  
16 when I deliver my guidelines calculations to the parties.

17 Turning to the guidelines issues, in this Court's  
18 preliminary guidelines calculation, it attributed 8.4 kilograms  
19 of crack cocaine to each defendant for the narcotics-related  
20 offense. To be sure, 8.4 kilograms was not seized from the  
21 defendants or any of the conspirators. But in the absence of a  
22 drug seizure, the district court "must approximate the quantity  
23 of the controlled substance." See U.S.S.G. Section 2D1.1,  
24 Application Note 12, using a preponderance of the evidence  
25 standard, United States v. Prince, 110 F.3d 921, at 925 (2d

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1 Cir. 1997) (citing United States v. Moore, 54 F.3d 92 at 101  
2 (2d Cir. 1995). In making that approximation, this Court may  
3 "rely on any information it knows about." United States v.  
4 Jones, 30 F.3d 276 at 286, (2d Cir. 1994).

5 In this Court's view, the trial evidence established  
6 that from approximately March 2010 through September 2011, each  
7 of these defendants was involved in a large-scale narcotics  
8 conspiracy. Under the guidelines each of these defendants is  
9 held responsible for their own acts as well as the reasonably  
10 foreseeable acts of their coconspirators. See U.S.S.G. Section  
11 1B1.3(a)(1) and (2). Members of the conspiracy sold drugs  
12 every day on Courtlandt Avenue, and the aggregate quantity of  
13 drugs sold is staggering. The most prolific crack sellers were  
14 Pemberton, Crocker and Parsons, and that group alone sold more  
15 than 280 grams of crack per month. Over the life of the  
16 conspiracy, the amount of crack sold by those conspirators  
17 alone exceeds five kilograms. There were more than a dozen  
18 regular crack sellers for the organization, and even by the  
19 most conservative of estimates the total crack cocaine sales by  
20 all the conspirators over the 18-month period charged in the  
21 indictment exceeded 8.4 kilograms.

22 While each conspirator did not sell crack in such  
23 quantities, there's more than a preponderance of the evidence  
24 that the operation sold on a continual basis during that  
25 18-month period, and that the total amount that was reasonably



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1 foreseeable to each defendant far exceeds 8.4 kilograms. That  
2 yields the highest base offense level under the guidelines for  
3 a narcotics conspiracy, offense level 38 pursuant to  
4 2D1.1(c)(1).

5 The trial evidence also established that the  
6 conspiracy possessed and sold a quantity of marijuana  
7 approximately equivalent to four kilograms, but that quantity  
8 has no effect on the overall guidelines calculation because it  
9 merely added to the crack cocaine quantity. See Section 2D1.1,  
10 Application Note 8(B). Four kilograms of marijuana is  
11 equivalent to only 1.12 grams of crack cocaine. See Section  
12 2D1.1, Application Note 8(D).

13 Turning to the role enhancements pursuant to Section  
14 3B1.1, a four-level increase is appropriate for a defendant if  
15 he was an organizer or leader of a criminal activity that  
16 involved five or more participants or was otherwise expense  
17 extensive. The trial evidence established that the narcotics  
18 conspiracy and racketeering enterprise was an extensive, long  
19 running operation that involved more than five participants.  
20 And following the death of the former leader of the enterprise,  
21 Terry Harrison, both Mr. Meregildo and Mr. Colon were leaders  
22 of the enterprise and the narcotics conspiracy itself.  
23 Accordingly, each of them receives a four-offense level role  
24 enhancement pursuant to Section 3B1.1(a) for the group that  
25 includes the narcotics conspiracy.

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1 Earl Pierce was not the leader of the racketeering  
2 enterprise or the narcotics conspiracy. But he also was not a  
3 mere worker or employee -- he stood in for the then leader of  
4 the enterprise and collected narcotics proceeds on his behalf.  
5 He planned and took part in violent acts in furtherance of the  
6 conspiracies, and he directed others in those activities.  
7 Accordingly, Mr. Pierce deserves a role enhancement. In its  
8 September 17, order this Court indicated that a two-level role  
9 enhancement would apply. But that subsection, that is,  
10 3B1.1(c), cannot apply here because the conspiracy was  
11 extensive and involved five or more participants, which  
12 triggers Section 3B1.1(a), not 3B1.1(c). To ensure that  
13 Mr. Pierce's guideline calculation appropriately reflects his  
14 role as a manager or supervisor, but not a leader of a criminal  
15 activity that involved five or more participants and was  
16 otherwise extensive, this Court applies a three-offense level  
17 enhancement pursuant to Section 3B1.1(b).

18 With respect to Mr. Meregildo's robbery conspiracy in  
19 accord with his plea agreement, the separate robbery conspiracy  
20 case, this Court will apply a two-offense level role  
21 enhancement to the groups in that case.

22 With respect to the other racketeering offenses, this  
23 Court declines the government's request to apply role  
24 enhancements.

25 Now, turning to the involvement of a minor in a

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1 narcotics conspiracy, Section 2D1.1(b)(14)(B)(i) provides for a  
2 two-offense level enhancement to a defendant who knowingly  
3 involved an individual who was less than 18 years in the  
4 offense. Numerous minors were members of the enterprise,  
5 including Bernard Folks, Enrique and Hassan Brito, Anthony  
6 Crocker and Dante Barber, and each of the trial defendants knew  
7 that at least one of these minors was involved in the narcotics  
8 conspiracy. Accordingly, each of the defendants receives a  
9 two-offense level enhancement pursuant to Section  
10 2D1.1(b)(14)(B)(i). Mr. Colon contends that his criminal  
11 history points should be four because his 2007 first degree  
12 robbery conviction is misclassified. That conviction, he  
13 argues, is not an adult conviction because he received a  
14 youthful offender adjudication. That argument is without  
15 merit.

16 A sentencing Court may assign criminal history points  
17 to a past conviction even when it has been vacated and deemed a  
18 youthful offender adjudication under New York law. United  
19 States v. Driskell, 277 F.3d 150 at 154 (2d Cir. 2002). See  
20 also United States v. Jackson, 504 F.3d 250, (2d Cir. 2007).  
21 Here, as in Driskell, Mr. Colon was convicted in the New York  
22 State Supreme Court, not family Court, in accord with New York  
23 Criminal Procedure Law Section 720.20. His conviction was then  
24 replaced by a youthful offender adjudication. Mr. Colon also  
25 received an adult sentence of between one and three years,

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1 serving more than 18 months of that sentence and at least a  
2 portion of that sentence was served in an adult facility.  
3 Accordingly, pursuant to Sections 4A1.1(a), 4A1.2(d)(1), and  
4 4A1.2(e)(1), three criminal history points are assigned to this  
5 conviction.

6 Turning now to Mr. Colon's objection to this Court's  
7 preliminary guidelines calculation for his Group Two offenses,  
8 that group includes all of the offenses related to Racketeering  
9 Act Five, including Count One, racketeering; Count Two,  
10 racketeering conspiracy; Count Eleven, conspiracy to murder  
11 members of the Maria Lopez Crew, in aid of racketeering, and  
12 Count Twelve, assault of Jing Bao Jiang in aid of racketeering.  
13 These crimes are grouped together pursuant to Sections 3D1.2(a)  
14 and (c).

15 The guideline covering this offense is Section 2A1.5  
16 because the underlying offense involved a conspiracy to commit  
17 murder. However, Section 2A1.5(c)(2) cross-references Section  
18 2A2.1 if the offense "resulted in an attempted murder or  
19 assault with intent to commit murder." Under Section 2A2.1,  
20 the base offense level is 33 if "the object of the offense  
21 would have constituted first degree murder." Here, the offense  
22 includes both the conspiracy to commit murder and the  
23 substantive offense of assault with intent to commit murder.  
24 Without question the object of the conspiracy to commit murder  
25 was to commit first degree murder. Colon and Pemberton and

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1 other enterprise members went to the Maria Lopez houses with  
2 the specific intent to kill their rivals. And after they saw  
3 their rivals, Pemberton tried to achieve the conspiracy's  
4 objective by shooting at them. But he missed and hit Jing Bao  
5 Jiang instead. Accordingly, pursuant to Section 2A2.1(a)(1),  
6 the base offense level is 33.

7 That leaves open the question of what, if any,  
8 specific offense characteristics apply. Under Section  
9 2A2.1(b)(1) an enhancement from between two and four levels is  
10 appropriate depending upon the severity of injury to the  
11 victim, provided that the victim at least sustained serious  
12 bodily injury.

13 Serious bodily injury means "injury involving extreme  
14 physical pain or the protracted impairment of a function of a  
15 bodily member organ or mental facility or requiring medical  
16 intervention such as surgery, hospitalization, or physical  
17 rehabilitation." Section 1B1.1, Application Note 1(L). Mr.  
18 Jiang testified that he was shot in the leg, lost feeling to  
19 it, was taken by ambulance to the hospital for surgery, where  
20 he stayed two or three days for recovery, could not walk for a  
21 time, and continues to have numbness in his leg. Similar but  
22 less serious injuries meet this standard, See, e.g., United  
23 States v. Moore, 997 F.2d 30 at 37, (5th Cir. 1993). There the  
24 Fifth Circuit found that a gunshot wound to the leg described  
25 as extremely painful, treated without surgery in the emergency

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1 room and requiring less strenuous activity by the victim was  
2 serious bodily injury.

3 To be a permanent or life threatening bodily injury  
4 means "injury involving a substantial risk of death or loss or  
5 substantial impairment of the function of a bodily member,  
6 organ, or mental faculty that is likely to be permanent."

7 Here, although Mr.Jiang continues to have numbness in his leg.  
8 There was no evidence that this condition will not resolve  
9 itself in the future. According, this Court finds that  
10 Mr.Jiang's injury is more than a serious bodily injury, but  
11 less than a permanent or life-threatening injury. That results  
12 in a three-level enhancement pursuant to Section  
13 2A2.1(b)(1)(C).

14 Turning finally to Mr. Pierce's objection to this  
15 Court's preliminary guidelines calculation for his Group Two  
16 offenses, that group includes all of the offenses related to  
17 Racketeering Act Four, including Count One, racketeering; Count  
18 Two, racketeering conspiracy; and Count Ten, assault and  
19 attempted murder of Tarean Joseph in aid of racketeering.  
20 These crimes are grouped together pursuant to Sections 3D1.2(a)  
21 and (c).

22 The guideline covering this offense is Section 2A2.1.  
23 Pursuant to Section 2A2.1(a)(1), the base offense level is 33.  
24 Because the object of the offense would have constituted first  
25 degree murder, as this Court observed earlier, under Section

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1 2A2.1(b)(1), an enhancement between two and four levels is  
2 appropriate depending on the severity of the injury to the  
3 victim, provided that the victim at least sustained serious  
4 bodily injury. This Court agrees with Mr. Pierce that only a  
5 two-offense level enhancement pursuant to Section 2A2.1(a) is  
6 appropriate because the evidence established only that  
7 Mr. Joseph sustained a serious bodily injury.

8 Now, Counts One and Two of indictment 11 Cr. 576  
9 against Mr. Meregildo are violations of Section 1962(c) and  
10 (d), which are covered by Section 2E1.1, which in turn refers  
11 to the guideline of the underlying offense. Application Note 1  
12 of Section 2E1.1 instructs that the sentencing court should  
13 treat each underlying offense as a separate count of  
14 conviction.

15 Pursuant to Section 3D1.2(a), all counts that "involve  
16 the same victim and the same act or transaction . . . shall be  
17 grouped together into a single group. Accordingly, Group One  
18 includes all the crimes associated with Racketeering Act Two.  
19 That is, Count One, racketeering; Count Two, racketeering  
20 conspiracy; Count Five, conspiracy to murder Carrel Ogarro in  
21 aid of racketeering; Count Six, murder of Carrel Ogarro in aid  
22 of racketeering; Count Fifteen, murder of Carrel Ogarro in  
23 connection with a drug crime; and Count Eighteen, use of a  
24 firearm in furtherance of the murder of Carrel Ogarro.

25 Because the underlying offense involves first degree

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1 murder, the applicable guideline is Section 2A1.1, which  
2 results in a base offense level of 43. There are no specific  
3 offense characteristics, so the total Group One offense level  
4 is 43.

5 Group Two for Mr. Meregildo includes all the crimes  
6 associated with Racketeering Act Six. That is, Count One,  
7 racketeering; Count Two, the racketeering conspiracy; Count  
8 Thirteen, the narcotics conspiracy. Because the underlying  
9 offense involves a violation of Section 841(b)(1)(A), the  
10 applicable guideline is Section 2D1.1. Because the offense  
11 involved more than 8.4 kilograms of cocaine base, the base  
12 offense level is 38. Mr. Meregildo was an organizer or leader  
13 in the racketeering enterprise that involved more than five  
14 participants and was extensive, so a four-level aggravating  
15 role enhancement is appropriate under Section 3B1.1(a).  
16 Because Mr. Meregildo received a role enhancement under Section  
17 3B1.1 and knowingly involved an individual less than 18 years  
18 of age, a further two-level enhancement applies pursuant to  
19 Section 2D1.1(b)(14)(B)(i), so the total Group Two offense  
20 level is 44.

21 Now, Count One of indictment 11 Cr. 758 against  
22 Mr. Meregildo is a violation of 18U.S.C. Section 371, which is  
23 covered by Section 2X1.1. Pursuant to Section 2X1.1(a), the  
24 base offense level is the base offense level from the guideline  
25 for the substantive offense, plus any adjustment from the



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1 guideline for any intended offense conduct that can be  
2 established with reasonable certainty. The underlying offenses  
3 are three bank robberies and three attempted bank robberies in  
4 violation of Section 2113(a). Those offenses covered by  
5 Section 2B3.1.

6 According to Section 2B3.1(a) the base offense level  
7 is 20. Because the property of a financial institution was  
8 taken for each robbery or was the object of the offense for  
9 each attempted robbery, a two-level enhancement applies  
10 pursuant to Section 2B3.1(b)(1).

11 Having reviewed the new PSR and the submissions of  
12 counsel, this Court also finds that Mr. Meregildo was an  
13 organizer and leader in these offenses, so a two-level  
14 enhancement applies pursuant to Section 3B1.1(c). However,  
15 this Court declines to give any other enhancement. Thus, the  
16 total offense level for the robbery conspiracy is 24. Because  
17 each robbery or attempted robbery involved separate victims,  
18 the underlying offenses cannot be grouped. Thus there are six  
19 groups associated with Count One, each with a total offense  
20 level of 24.

21 Group Three incorporates the robbery conspiracy and  
22 the February 10, 2011 robbery of a Chase Bank on First Avenue  
23 in Manhattan.

24 Group Four incorporates the robbery conspiracy and the  
25 February 14, 2011 robbery of the Hudson Valley Bank, located on

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1 Allerton Avenue in the Bronx.

2 Group Five includes the robbery conspiracy and the  
3 February 15, 2011, attempted robbery of a Bank of America on  
4 west 145th Street in Manhattan.

5 Group Six incorporates the robbery conspiracy and the  
6 February 16, 2011, attempted robbery of a Chase Manhattan bank  
7 on Castle Hill Avenue in the Bronx.

8 Group Seven includes the robbery conspiracy and the  
9 February 18, 2011, attempted robbery of a Chase Bank on Eighth  
10 Avenue in Manhattan.

11 And Group Eight incorporates the robbery conspiracy  
12 and the February 21, 2011, robbery of a Chase Manhattan bank  
13 located at on 125th Street in Manhattan.

14 So each of those groups carries an offense level of  
15 24.

16 To calculate the combined adjusted offense level,  
17 Section 3D1.4 directs the Court to increase the highest group  
18 offense level by certain prescribed amounts. To make the  
19 determination, the group with the highest offense level is  
20 counted as one unit as well as any group offense level within  
21 four levels. See Section 3D1.4(a). Any group with an offense  
22 level that is nine or more levels less serious than the highest  
23 group is disregarded. Groups One and Two are counted as one unit  
24 each and Groups Three through Eight are therefore disregarded.  
25 That totals two units, which results in a two-level increase in

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1 the highest group offense level. Thus, Mr. Meregildo's  
2 combined adjusted offense level is 46.

3 Now, this Court recognizes that Mr. Meregildo pled  
4 guilty to the robbery conspiracy. However, because of the  
5 grouping analysis, which is solely driven by the  
6 racketeering-related offenses, there is a reduction for  
7 acceptance of responsibility.

8 Mr. Meregildo's criminal history category as reported  
9 in the probation report is correct. He has a total of seven  
10 points, and therefore Criminal History Category of IV. Two  
11 points for his robbery in the first degree, two points for his  
12 assault in the first degree, two points for his attempted  
13 possession of a loaded firearm in the second degree, and one  
14 point for unlawful possession of marijuana.

15 With a total offense level of 46 and a Criminal  
16 History Category of IV, Mr. Meregildo's guideline range is life  
17 in prison.

18 In addition, Count Twenty-two provides for a 60-month  
19 mandatory consecutive term.

20 Turning to Mr. Colon's guideline calculation, Counts  
21 One and Two are violations of 1962(c) and (d), which as I've  
22 said are covered by Section 2E1.1.

23 Application Note 1 instructs that the sentencing Court  
24 should treat each underlying offense as a separate count of  
25 conviction. Pursuant to Section 3D1.2(a) all counts that

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1 involve the same victim and the same act or transaction shall  
2 be grouped together in a single count.

3 Accordingly, Group One includes all the crimes  
4 associated with Racketeering Act Three, that is, Count One,  
5 racketeering; Count Two, the racketeering conspiracy; Count  
6 Seven, the conspiracy to murder Delquan Alston in aid of  
7 racketeering; Count Eight, the murder of Delquan Alston in aid  
8 of racketeering; Count Sixteen the murder of Delquan Alston in  
9 connection with the drug crime; and Count Nineteen, the use of  
10 a firearm in furtherance of the murder of Delquan Alston.  
11 Because the underlying offense involves first degree murder,  
12 the applicable guideline is 2A1.1, which results in a base  
13 offense level of 43. There are no specific offense  
14 characteristics, so the total offense level for Group One is  
15 43.

16 Group Two includes all the crimes associated with  
17 Racketeering Act Five. That is, Count One, racketeering; Count  
18 Two, the racketeering conspiracy; Count Eleven, the conspiracy  
19 to murder members of the Maria Lopez Crew in aid of  
20 racketeering; and Count Twelve, the assault of Jing Bao Jiang  
21 in aid of racketeering. Because the underlying offense  
22 involved a conspiracy to commit murder, it's covered by Section  
23 2A1.5. However, pursuant to the Section 2A1.5(c)(2), because  
24 the offense resulted in an assault with intent to commit  
25 murder, the applicable guideline is Section 2A2.1. Because the

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1 object of the offense would have constituted first degree  
2 murder, the base offense level is 33 pursuant to 2A2.1(a)(1).  
3 And because the victim Jing Bao Jiang suffered serious injury,  
4 that's more than serious bodily injuries but less than  
5 permanent bodily injury, a three-level increase applies. So  
6 the total offense level for Group Two 36.

7 Group Three includes all of the crimes associated with  
8 Racketeering Act Six, that is, Count One, racketeering; Count  
9 Two, the racketeering conspiracy, Count Thirteen, the narcotics  
10 conspiracy. Because the underlying offense involves a  
11 violation of 841(b)(1)(A), the applicable guideline is 2D1.1.  
12 Because the offense involved more than 8.4 kilograms of cocaine  
13 base, the base offense level is 38. Mr. Colon was an organizer  
14 or leader in the racketeering enterprise that involved more  
15 than five participants and was extensive. And so a four-level  
16 aggravating role enhancement applies pursuant to Section  
17 3B1.1(a). Because Mr. Colon received a role enhancement under  
18 3B1.1 and knowingly involved an individual less than 18 years  
19 of age in the offense, a two-level enhancement applies pursuant  
20 to Section 2D1.1(b)(14)(B)(i). So the total Group Three  
21 offense level is 44.

22 To calculate the combined adjusted offense level, this  
23 Court is required to increase the highest group offense level  
24 by certain prescribed amounts. To make that determination, the  
25 group with the highest offense level is counted as one unit as

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1 well as any group offense level within four levels. Any group  
2 with an offense level that's more than four but less than nine  
3 levels less serious than the highest group is counted as half  
4 of the unit, Section 3D1.4(b). Groups One and Three are  
5 counted as one unit each, and Group Two is counted as one-half  
6 unit. That totals two and a half units which results in a  
7 three-level increase to the highest group offense level.

8 Thus, Mr. Colon's combined adjusted offense level is  
9 47, and there's no adjustment for acceptance. His criminal  
10 history category is III. He has five points, three points for  
11 robbery in the first degree, and two points for committing  
12 offense while serving a criminal justice sentence. Thus, his  
13 guideline range for total offense level of 47 with criminal  
14 history category III is life in prison.

15 In addition, there are statutory mandatory minimums of  
16 120 months as a consecutive term on Count Twenty-One and 300?  
17 Months mandatory consecutive term on Count Twenty-Two.

18 Finally, turning to Mr. Earl Pierce, Counts One and  
19 Two are, as I said, violations of Sections 1962(c) and (d),  
20 which are covered by Section 2E1.1.

21 Application Note 1 instructs the sentencing Court to  
22 treat each underlying offense as a separate count, and pursuant  
23 to Section 3B1.2(a) all counts involving the same victim and  
24 the same act or transaction shall be grouped together into a  
25 single count.

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1           Accordingly Group One includes all the crimes  
2 associated with Racketeering Act One. That is, Count One,  
3 racketeering; Count Two, racketeering conspiracy, and Count  
4 Three, conspiracy to murder members of the Melrose Organization  
5 in aid of racketeering.

6           Because the underlying offense involved a conspiracy  
7 to commit murder, it's covered by 2A1.5. Pursuant to  
8 2A1.5(c)(1), because the offense resulted in the death of a  
9 victim, the applicable guideline is Section 2A1.1. Pierce's  
10 acquittal on the substantive murder count makes no difference  
11 as to whether this guideline applies because he was convicted  
12 of the very conspiracy that resulted in the murder of Jason  
13 Correa. Thus, because the underlying offense involves first  
14 degree murder, the applicable guideline is Section 2A1.1. That  
15 results in a base offense level of 43. There are no specific  
16 offense characteristics, so the Group One offense level for  
17 Mr. Pierce is 43.

18           Group Two includes all of the crimes associated with  
19 Racketeering Act Four. That is, Count One, racketeering; Count  
20 Two, the racketeering conspiracy; and Count Ten, the assault  
21 and attempted murder of Tarean Joseph in aid of racketeering.  
22 The guideline covering this offense is Section 2A2.1. Pursuant  
23 to that guideline, the base offense level is 33 because the  
24 object of the offense could have constituted first degree  
25 murder. As this Court observed earlier, an enhancement between

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1 two and four levels is appropriate depending on the severity of  
2 the injury to the victim. This Court agrees with Mr. Pierce  
3 that only a two-offense level enhancement under 2A2.1(a) is  
4 appropriate because the evidence is only that Mr. Joseph  
5 sustained a serious bodily injury. So the total Group Two  
6 offense level for Mr. Pierce is 35.

7 Group Three includes all of the crimes associated with  
8 Racketeering Act Six. That is, Count One, racketeering, Count  
9 Two, the racketeering conspiracy; and Count Thirteen, the  
10 narcotics conspiracy. Because the underlying offense was a  
11 violation of 841(b)(1)(a), the applicable guideline is 2D1.1.  
12 Because the offense involved more than 8.4 kilograms of cocaine  
13 base, the base offense level is 38.

14 This Court indicated in its September 17 order that  
15 its preliminary guidelines calculation for Mr. Pierce included  
16 a two-level role enhancement pursuant to Section 3B1.1(c), but  
17 having read the submissions of counsel, this Court revises that  
18 preliminary calculation as follows: For this offense,  
19 Mr. Pierce was a manager or supervisor, but not an organizer or  
20 leader. And the offense involved more than five participants  
21 and was extensive. And so a three-level aggravating role  
22 enhancement applies pursuant to Section 3B1.1(b). Because  
23 Mr. Colon received a role enhancement under Section 3B1.1 and  
24 he knowingly involved an individual less than 18 years of age  
25 in the offense, a two-level enhancement applies pursuant to



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1 Section 2D1.1(b)(14)(B)(i), so the total Group Three offense  
2 level is 43.

3 Here again, to calculate the combined adjusted offense  
4 level, this Court applies the multiple count protocol under  
5 Section 3D1.4.

6 And so Group One had an offense level of 43, Group  
7 Three had an offense level of 43. Each of those groups is  
8 counted as one unit, and Group Two, which had an offense level  
9 of 35, is counted as a half unit. That totals two and a half  
10 units, which results in a three-level increase to the highest  
11 group offense level. Thus, Mr. Pierce's combined adjusted  
12 offense level is 46.

13 Mr. Pierce has a very extensive criminal history. He  
14 is a Criminal History Category VI, and he is a career offender.

15 He has three points for the criminal sale of a  
16 controlled substance, one point for the criminal possession of  
17 marijuana, one point for the criminal sale of marijuana, three  
18 points for the criminal sale of a controlled substance, two  
19 points for resisting arrest, one point for criminal possession  
20 of marijuana, and one point for menacing.

21 With a total offense level of 46 and a Criminal  
22 History Category of VI, Mr. Pierce's guideline range is life in  
23 prison.

24 In addition there are statutory additions. On Count  
25 Twenty there's a mandatory 120-month consecutive term, and on

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1 Count Twenty-Two a mandatory 300-month consecutive term.

2 This constitutes the Court's guidelines determinations  
3 with respect to each of the defendants.

4 So at this time, are there any victims who wish to  
5 address the Court?

6 MR. ARAVIND: Yes, your Honor. There are at least two  
7 victims that I believe want to address the Court.

8 The first is Ms. Iris Perez. She has asked I believe  
9 someone else to read.

10 Your Honor, if it's OK I'll read her letter and then  
11 Mr. Correa's daughter would like to speak.

12 THE COURT: Ms. Perez is present here in court?

13 MR. ARAVIND: She's here in court in the third row.

14 THE COURT: All right.

15 MR. ARAVIND: Your Honor, this is a letter from Iris  
16 Perez, Jason Correa's mother.

17 "This is just so surreal to me. I will never be able  
18 to live my life the same without my son Jason. I can't call  
19 him to make sure that he's OK, or ask him what time he's coming  
20 home. I can no longer hear his voice when he walks through the  
21 door asking Where's my mom?

22 "I feel like I'm living in a nightmare. There are not  
23 days that go by that I don't think of my son. When I am alone  
24 I wonder is he OK. Why can't I hear his voice. Why can't I  
25 see my son anymore. Then I remember that this kid I treated as

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1 my own, Earl, set my son Jason up to be killed. This kid that  
2 I gave a home, food, clothes and sneakers to really did this to  
3 my son. I remember like it was yesterday when my son was  
4 killed. Jason and I spoke a week before and I told him to stay  
5 away from Courtlandt Avenue because I didn't think it was safe  
6 and he told me, Ma, I'll be OK. Earl gave me a handshake.  
7 He's my friend.

8 "The day he was killed he told me he would be right  
9 back, and I kept calling him to come home, but he told me he  
10 was tired and asked if I could go pick him up. I was on my way  
11 out to go pick up my son and I get the call that he was killed  
12 in the building.

13 "Can you imagine what a mother could feel losing a  
14 child. It is a feeling that I could never imagine until it  
15 happened to me. There are days that I want to take my own life  
16 just to be with my son and be sure he's OK. There are days I  
17 stay without air because I cry and cry, wishing I can see my  
18 son, but nothing brings him back.

19 "I close my eyes thinking he'll be with me and he's  
20 not. My father, my family will never be the same without  
21 Jason. He was the man figure in our home. He was a father to  
22 a beautiful little girl. He was the one everyone looked up to  
23 and looked forward to being with. Now we don't have that  
24 thanks to Earl.

25 "I wish so many bad things on Earl for doing this to

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1 my son, but I know it is in the Court's hands. He is a cruel  
2 human being that I should never have accepted in my home when  
3 he had nothing or no one the time his only brother shot him in  
4 the leg. Now he left me with nothing because my son is gone.  
5 He deserves to spend the rest of his life locked up in prison  
6 and pay for what he's done. I hope that the Courts could put  
7 themselves in my shoes and feel what myself and our family  
8 feel. We feel betrayed, sad, lost, confused.

9 "There are so many things we feel and can't even put  
10 into words. There is not a day that goes by that my heart  
11 doesn't feel pain more than anything. I want my son and I  
12 can't see hear or touch him anymore.

13 I beg for justice, so that my son can rest in peace  
14 and my family can have closure knowing that the persons  
15 involved in his murder will pay for the crime they committed."

16 Now, your Honor, we have a second impact statement  
17 it's from Jaliyah Perez.

18 MS. PEREZ: When my father was taken out of my life I  
19 was devastated. I couldn't believe it. I cried all day, all  
20 night. When my father was removed from my life I felt like  
21 they removed half of my heart. There aren't enough words in  
22 the world that can describe how I feel.

23 I was only eight years old when my father passed away.  
24 And hurts my heart to hear all my friends talking about their  
25 father and I'm not. He had a family who loved him, a daughter

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1 who thought she would have him for a long time, but I guess  
2 not. I really love my father. I wish I still had him today  
3 but I don't. I miss calling him Daddy, and I miss him and have  
4 many memories.

5 MR. ARAVIND: Your Honor, those were the two victim  
6 impact statements.

7 I am not sure if there's anyone else that has entered  
8 the courtroom that wants to give a statement, but those are the  
9 two we have heard of before.

10 THE COURT: This Court received certain letters in  
11 addition to the statements that have been read or given in  
12 court.

13 Is there anyone else who wishes to make speak on  
14 behalf of a victim.

15 Seeing no one coming to the podium, I would like to  
16 turn to defense counsel to hear their remarks.

17 MR. LEE: Your Honor, first, speaking to your Honor's  
18 ruling on the guidelines determination, the defense has always  
19 maintained that the crimes charged against Mr. Meregildo were  
20 based almost exclusively upon the testimony of people who come  
21 from a similar environment who have had similar backgrounds to  
22 Mr. Meregildo and who were themselves charged with committing  
23 acts of violence and crime equal or greater in number than  
24 Mr. Meregildo himself.

25 Also, the defense always maintained that there was

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1 nothing in the evidence that independently corroborated the  
2 testimony of these cooperating witnesses. I think your Honor  
3 yourself stated that or touched upon that in your ruling.

4 There was actually nothing that the government could  
5 produce independent of these cooperators, who to your Honor, to  
6 the jury admitted that they were liars, admitted that they had  
7 a self-interest, they had something to gain here.

8 Now, to be sure, I understand your Honor's ruling, but  
9 it should be clear that these enhancements are not supported by  
10 the jury verdict as far as Count Two is concerned. There's  
11 nothing in their verdict that speaks to or supports a  
12 determination that Mr. Meregildo was any sort a leader or as to  
13 the quantity of drugs.

14 I think, even with a low threshold requirement of a  
15 preponderance of evidence, I don't believe this Court should  
16 find that these admitted liars, people who themselves had so  
17 much to gain for false, fabricated, embellished testimony  
18 should be the basis upon enhancing his guidelines.

19 That being said, of course, your Honor, I know that  
20 Mr. Meregildo's conviction under Count Six requires your Honor  
21 to sentence him to a term of life imprisonment without a  
22 possibility of parole.

23 Mr. Meregildo's wife is here in court. His  
24 two-year-old son, or perhaps two and a half years old now, is  
25 not present in court. Ms. Meregildo has been here almost

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1 consistently at every proceeding during the entire trial, many  
2 times with Mr. Meregildo's son. They visit him unfailingly at  
3 the jail. I have been in touch with them during the entirety  
4 of this case.

5 His mother has always been in touch with me and other  
6 members of his family. They care very much about him. I  
7 touched upon Mr. Meregildo's background in my sentencing  
8 submission to give you, your Honor, some insight as to where  
9 Mr. Meregildo himself comes from and the losses that he himself  
10 has suffered. I also touched upon some efforts in his young  
11 life to overcome the consequences of the environment he was  
12 born into.

13 In that regard his story is sad, and in that regard he  
14 is a failure. But the failures greatly outnumber the successes  
15 of people escaping that environment.

16 That being said, your Honor, my client's perspective  
17 as a 20-year-old is limited. I don't know what he can know as  
18 a 20-year-old about what the future will look like or hold when  
19 he spends probably the rest of his life in jail, but I am sure  
20 his feelings are genuine now for his family and his desire to  
21 try to maintain contact with his son and his family.

22 So the one thing I do ask of the Court, balancing not  
23 only Mr. Meregildo's individual characteristics and background,  
24 look to the future what he may be able to, how he might change,  
25 how his perspective might change, and that one of the only

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1 things he has is his family.

2 They are not affluent people. They do not have  
3 resources to travel. If they had to buy airplane tickets, that  
4 would pretty effectively deprive him of visits from his family.

5 So, to the extent that it does not run contrary to the  
6 BOP's independent determinations, I do ask the Court to make a  
7 recommendation that Mr. Meregildo be designated to serve his  
8 sentence at a facility, the closest possible and at least  
9 within driving distance of his family here in the New York City  
10 area.

11 At least in that regard, I think Mr. Meregildo and any  
12 human being deserves to have the chance to try to maintain that  
13 bond with his family.

14 Thank you, your Honor.

15 THE COURT: Thank you, Mr. Lee.

16 Mr. Dinnerstein.

17 MR. DINNERSTEIN: Thank you, your Honor.

18 For today, your Honor, I have the really sad task of  
19 standing near a 21-year-old who will be told fairly soon that  
20 he will spend the rest of his life in jail.

21 No matter what he does from this day onward, no matter  
22 how he grows up, no matter whether or not he is rehabilitated,  
23 he will simply remain behind bars for the rest of his life.

24 He has, and he understands this, that he has no hope  
25 of ever being released from prison.



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1           What drives that reality is the conviction for the  
2 murder of Delquan Alston that was based upon the word of a  
3 person named Devon Parsons, a true psychopath. Parsons' trial  
4 testimony conflicted with every bit of forensic evidence that  
5 was presented in this courtroom.

6           I know, your Honor, that this Court uses language very  
7 carefully, and when addressing the Rule 29 motion that was made  
8 by me, this Court used the term that parson' testimony was "not  
9 incredible." Based upon that standard of review, not  
10 incredible, Melvin must now face a mandatory life sentence.

11           The government in its sentencing memorandum -- and  
12 there was not one word about Melvin's history or background,  
13 argues that such a sentence, a life sentence for this  
14 21-year-old is justice.

15           I have to say they're wrong. Melvin's background is  
16 one of deprivation, it's one of loss, loss of family to death  
17 or to mental illness, loss of friends to street violence. He  
18 was born in a place that was not one of his own making, that is  
19 violent, it is drug infested. It's going to remain that way  
20 after Melvin serves this sentence.

21           He was told also at 18 years old that he couldn't live  
22 with his mother, who is probably the one person who most cared  
23 about him.

24           The government now says warehouse him forever. I  
25 don't think that's justice, your Honor, but it is the reality.

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1 A byproduct of our prison is to strip people of any  
2 sense of personal identity, to strip people of a sense of  
3 dignity. Melvin is a number, 66076054, he stands now in this  
4 courtroom shackled, which frankly troubles me, your Honor. He  
5 sat through a trial for two months where he was not once  
6 shackled, even though at some point there was some discussion  
7 about that.

8 The Court looked at him and realized that was  
9 unnecessary and that they made a determination that he could  
10 sit in a courtroom and act respectfully of this Court process.

11 For two months, your Honor, you didn't ever hear a  
12 peep from him. He never demonstrated disrespect to this court  
13 system. He never demonstrated any sort of disrespect either to  
14 the prosecutor or to me. But today he's being shackled.

15 During that trial he was woken up every morning at 5  
16 o'clock in the morning so that he could get here on time, and  
17 he got here on time. And he was returned to the Metropolitan  
18 Detention Center across the river usually after eight or nine  
19 p.m.

20 He never complained about it. He just simply did it,  
21 and in this courtroom he treated this process, this system with  
22 a great deal, I believe, of respect.

23 Apparently, for the rest of his life he is now going  
24 to be shackled, he's going to be in a cage, he's going to be  
25 treated as if he's subhuman.

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1 He's now in a segregated housing unit. He is denied  
2 visits from his family, phone calls. He receives shabby  
3 medical treatment, where he has open sores that don't get  
4 treated.

5 The government steals his mail and reads it, and they  
6 find something in the mail that they feel is necessary to give  
7 to the Court because he shows loyalty and friendship, and that  
8 somehow is a sin. He tries to maintain a sense of dignity when  
9 the system, the prison system tries to break him of that. The  
10 government wants to demonize him. Maybe that's why he's being  
11 shackled now and he's angry.

12 He's 21 years old and he's going to now be serving a  
13 horrendous punishment. Often people who do the judging are  
14 born with silver spoons in their mouths. Frankly, Melvin  
15 wasn't born with any spoon at all. He had to dig for  
16 everything that he was going to get in this world. He had to  
17 fight for it.

18 No one gave him anything other than loss and  
19 disappointment. Now, clearly, he handled that pressure badly.  
20 He's made a ton of mistakes and now the government for the  
21 first time seems to have an interest in him, in punishing him.  
22 Maybe someday it would have been better if someone reached out  
23 and gave him a helping hand.

24 But now there are enormous resources that are going to  
25 be used to punish, not to help.

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1           What's the lesson of all this, your Honor? For  
2           Melvin, I don't know what it is. He's going to be disposed of.  
3           He's going to be warehoused forever.

4           But I have another question. Why do I say to his  
5           younger brother who is here in court, 17 years old? He's  
6           trying to do good, goes to school every day, is given a school  
7           uniform to help build maybe dignity and respect in yourself.

8           He's never been arrested before. Of course, because  
9           he lives in the South Bronx and maybe because he's  
10          African-American, he gets stopped all the time, or often by  
11          police officers in these stop and frisks.

12          Even today what he learns is that there are people who  
13          are representatives of the government who distrust him. And  
14          what, more importantly than what I say to him, does the symbol  
15          of influence and power say to him. What do you say to him?

16          Can you provide him with some hope that he can have a  
17          decent future, a different future from his brother, who never  
18          had anyone who looked out for him?

19          I don't know what to say, your Honor. I really simply  
20          don't.

21          One thing, your Honor -- and I'm going to be done  
22          soon -- Melvin and I want to thank this Court for treating both  
23          of us throughout the trial with a great deal of respect and  
24          with dignity. You treated my client like a human being. When  
25          questions were initially brought up about shackling or about

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1 treating him or demonizing him by suggesting he is simply going  
2 to be violent, you got involved and you prevented it from  
3 happening.

4 I thank you for that. I believe Melvin thanks you for  
5 that. I've got nothing really else to say other than we thank  
6 you for the way you conducted this trial. You did it in an  
7 appropriate spirit. I may not have agreed with every one of  
8 your rulings, but that is our separate roles in this.

9 But I wish somehow that Melvin Colon, who is now going  
10 to get a life sentence, can hear and that you can hear that he  
11 had value, he had intelligence. And now, sadly, it is all  
12 wasted.

13 Thank you, your Honor.

14 THE COURT: Thank you, Mr. Dinnerstein.

15 Mr. Miedel.

16 MR. MIEDEL: Your Honor, even if you wanted to, you do  
17 not have the power to give Joshua Meregildo or Melvin Colon any  
18 other sentence than a term of life.

19 But Earl Pierce is different. You have the power, you  
20 have the authority, and you have the ability to exercise some  
21 modicum of mercy, to offer a man a tiny speck of hope.

22 You have the power to say to Earl Pierce, You will  
23 spend most of the rest of your life in prison, you will not see  
24 your kids grow up, you will probably not see your mother or  
25 your aunt again on the outside, but if you behave yourself in

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1 prison, if you stay healthy and out of harm's way, you will  
2 someday, a very, very long time from now, you will have the  
3 chance to leave that prison see what is left of your family and  
4 try to enjoy whatever small amount of time you have left.

5 You, your Honor, have the power to offer hope if you  
6 choose to exercise it. Your Honor, that is all it is. It's  
7 hope. Because no one in this courtroom can accurately predict  
8 what will happen to any of us over the next 45 years. That is  
9 particularly impossible to predict in the prison context, where  
10 medical services are poor and healthy living is difficult. And  
11 violence is prevalent.

12 We don't know what is going to happen. But I guess  
13 the question for you, your Honor, is whether Earl Pierce  
14 deserves to have some hope. Whether what he's been convicted  
15 of, what the allegations were that he had supposedly did, if  
16 those are so egregious, so condemned by society, so worthy of  
17 the ultimate punishment except for death, that he needs to be  
18 robbed of even that tiny glimmer of hope.

19 I just want to reiterate what we are talking about  
20 here. We are talking about, on the one hand, life in prison, a  
21 life that could very well end up for years in a prison hospital  
22 ward at taxpayers' expense at the end of Earl Pierce's life.

23 Or, on the other hand, at least 45 years in prison.  
24 45 years, that is not a slap on the wrist. That is not a  
25 lenient sentence. That is not even a harsh sentence by most

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1 people's standards. That is a sentence that is longer than  
2 almost all countries in this world give to their worst  
3 murderers. That is a sentence that is 20 years longer than the  
4 maximum sentence for murder in New York, 25 years to life,  
5 where, even if he were not released in 25 years, he would have  
6 the opportunity to make his case with the parole board ten  
7 times.

8 So does Earl Pierce deserve a sentence that is even  
9 harsher, more brutal, and more severe than that, a sentence  
10 that absent the death penalty is or should be reserved for the  
11 worst of the worst?

12 Your Honor, Earl Pierce was convicted of being part of  
13 a street crew, selling drugs, holding guns, involved in the  
14 shooting and attempted murder of a rival, agreeing with others  
15 that maybe rival drug dealers should be killed.

16 To be sure, your Honor, that is terrible conduct by  
17 any standard. That is conduct to be condemned by society and  
18 worthy of severe punishment. There is no question about that.

19 That is conduct for which punishment must deter  
20 conduct by the individual and have a deterrent effect on  
21 others. All that is clear.

22 But let us not forget that Earl Pierce did not  
23 participate in any of the random shootings others in this case  
24 were accused of. He did not participate in the extraordinary  
25 spate of robberies that some of the cooperators admitted to.

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1 Perhaps most importantly, your Honor, he was found not guilty  
2 by the jury in this case of the one killing of which he was  
3 accused.

4 That says something. He wasn't acquitted because of  
5 some technical or because the jury was misinformed or misled.  
6 He was acquitted because the evidence wasn't there, because he  
7 didn't participate in that murder. He was acquitted, I  
8 presume, because the videos that we had demonstrated beyond any  
9 doubt that all the cooperators who testified about the Jason  
10 Correa killing could not be believed, that they lied or were  
11 wrong.

12 So, your Honor, in the end the question remains, is 45  
13 years in prison enough, enough for what Earl Pierce is  
14 convicted of?

15 I know that I come at this from a very different  
16 perspective than the folks at that table and perhaps from you  
17 as well. But how can the answer to that question not be yes?  
18 45 years is enough.

19 We have spent much of the last few days and even in  
20 this proceeding focused on the guidelines, and I understand  
21 that the Court must determine what the correct and applicable  
22 guideline is before deciding what a just and reasonable  
23 sentence should be.

24 But the guidelines are a mechanical, cold, and in this  
25 case extremely blunt tool being applied to the question of



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1 whether you throw a person's life away or you allow him the  
2 possibility of some hope.

3 This is not about a calculation, whether the  
4 guidelines should be 37 to 46 months, or 51 to 63 months. This  
5 is about likely to die in prison or definitely dying in prison.

6 There are numerous places in these guidelines where  
7 the logic of the guidelines or the underlying guidelines could  
8 be unpacked.

9 For example, how much sense does it make to have the  
10 RICO guideline be life because of the conspiracy to murder when  
11 the substantive act Count Three has a mandatory maximum  
12 sentence of ten years, and Mr. Pierce was acquitted of the  
13 substantive murder.

14 But there really is no point, in my view, to spend  
15 much time with the guidelines. Yes, the guidelines recommend  
16 life. The guidelines would also recommend life for Charles  
17 Manson or Adolph Hitler.

18 In the end the guidelines at this end of the  
19 guidelines chart, at that end, they provide little guidance to  
20 you or to anyone to distinguish between a Charles Manson and an  
21 Earl Pierce.

22 But the guidelines don't determine a reasonable and  
23 just sentence, you do.

24 The overriding sentencing principle is not the  
25 guidelines, but it is the introductory statement to 18 U.S.C.

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1 3553(a), impose a sentence sufficient but not greater than  
2 necessary.

3 So we arrive again at the question, does Earl Pierce  
4 deserve a glimmer of hope, the hope of the possibility of  
5 release someday, or does he deserve simply the certainty of  
6 despair?

7 I have not devoted much time in my sentencing  
8 submission or now to who Earl Pierce is or has been. Because  
9 the reality is I don't see how it matters. Whoever he is now,  
10 he will be a vastly different person when he is in his late  
11 60s.

12 Even if he makes no effort at all at self-improvement  
13 he is than unlikely to be a risk to anyone, he is unlikely to  
14 sell drugs, shoot at people or do any of the things that he was  
15 accused of doing. The one thing I would like to point out,  
16 your Honor, is, it is a small piece of information in the PSR.

17 In almost two years of incarceration at MDC, Earl  
18 Pierce has not had a single disciplinary infraction. That's no  
19 small feat at the MDC, and frankly it's a rarity for defendants  
20 charged in these gang RICO-type cases.

21 It bodes well I think. It bodes well that he has the  
22 capacity to become a different person while incarcerated, to  
23 learn, to think, to reflect on his life.

24 But, your Honor, I would think there has to be a  
25 reason to do that. A reason to think that following the rules,

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1 avoiding violence, fulfilling your potential is worth it, an  
2 incentive to be a good inmate. And that reason, that reason is  
3 the hope that I have been talking about.

4 Your Honor, I have never been in the position before  
5 of asking a judge to impose a 45-year sentence as a best-case  
6 scenario, where I have pleaded simply for the possibility, the  
7 possibility that my client will someday be released, most  
8 likely well after I'm no longer alive.

9 But I'm asking you, your Honor, I'm urging you with  
10 all the sincerity that I have, do not throw Earl Pierce's life  
11 away completely. Allow him to live his life with the hope  
12 that, if things go right, if he holds up his end of the  
13 bargain, someday he will leave that prison alive.

14 Thank you.

15 THE COURT: Thank you, Mr. Miedel.

16 Mr. Aravind, does the government wish to be heard?

17 MS. HELLER: Your Honor, I will speak for government.

18 THE COURT: Fine, Ms. Heller.

19 Would you take the podium, please.

20 MS. HELLER: Yes, your Honor.

21 THE COURT: Thank you.

22 MS. HELLER: Your Honor, today is a very sad day.  
23 It's a sad day first and foremost for the victims' families.  
24 It is a sad day for all of these defendants.

25 The government is not going to say very much about

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1 Mr. Meregildo or Mr. Colon because, as their attorneys have  
2 said and as the Court well knows, they face mandatory life  
3 sentences here.

4 The government's hope is only that as the defendants  
5 serve their sentences that they fall away from the ongoing gang  
6 activity that we have observed since the conclusion of the  
7 trial.

8 We felt it important that your Honor know that this is  
9 still happening, and it is our hope that it concludes as the  
10 years pass.

11 As for Mr. Pierce, your Honor, the government does  
12 believe that a life sentence is appropriate for him.  
13 Mr. Pierce was older, is older than Mr. Colon and  
14 Mr. Meregildo. He should have known better than to do what he  
15 did.

16  
17 He had an extensive criminal history going into this  
18 criminal conspiracy. He is a career offender. He has used up  
19 his chances. He is a serious danger to society. He destroyed  
20 a family, as we saw here today.

21 By the grace of God, he did not destroy a second  
22 family. However, Tarean Joseph was shot I believe five or six  
23 times in the chest. Somehow he survived, but it was by the  
24 grace of God that he did, or else Mr. Pierce could have stood  
25 here being held responsible for two murders.

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1 I am not going to relitigate the case, but it's simply  
2 a mischaracterization of the jury's verdict for Mr. Miedel to  
3 say that Earl Pierce did not participate in the murder of Jason  
4 Correa. He was found guilty of participating in a conspiracy  
5 that led directly to Mr. Correa's murder.

6 Mr. Pierce set up Mr. Correa to be murdered. He lay  
7 in wait while the murder happened. He collected the murder  
8 weapon after the murder was concluded.

9 He was about as involved in the murder as one could be  
10 without having pulled the trigger. Mr. Pierce needs to come to  
11 account for that murder here today. He needs to come to  
12 account for his role in the shooting of Tarean Joseph. He  
13 needs to come to account for his extensive involvement in the  
14 drug conspiracy that took place here and for the havoc that was  
15 wreaked upon his community and the people who lived there.

16 Forty-five years is an extraordinarily long time. No  
17 one can ever stand here and tell you that it isn't.

18 But, your Honor, Congress makes the laws. We simply  
19 enforce them, your Honor imposes a sentence. A 45-year  
20 sentence would not account at all for Mr. Pierce's role in the  
21 criminal conspiracy to murder Jason Correa or the shooting of  
22 Tarean Joseph, that conspiracy.

23 What the 45 years would account for would be the  
24 narcotics conspiracy and two firearms charges. So if your  
25 Honor were to impose a 45-year sentence and no other sentence,

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1 you would essentially be nullifying the jury's verdict on all  
2 of the other charges.

3 The government doesn't think that is appropriate.  
4 That's not what Congress had in mind, and that's not what the  
5 guidelines say.

6 So, for all those reasons, your Honor, we believe life  
7 sentences are appropriate for each of these three defendants.

8 THE COURT: Thank you, Ms. Heller.

9 Mr. Lee, does your client wish to address the Court?

10 MR. LEE: May I just have a moment, your Honor.

11 THE COURT: Certainly.

12 (Counsel conferred with the defendant)

13 MR. LEE: Your Honor, against my advice, I have spoken  
14 to my client about the fact that I will be filing an appeal on  
15 his behalf of all convictions and sentencing. I am afraid of  
16 the ramifications of his statement, but Mr. Meregildo insists  
17 against my advice to make a statement.

18 Would your Honor indulge me and allow me to stand  
19 beside him as he makes the statement in case I may have to  
20 answer a question or say something to him.

21 THE COURT: I will permit you to stand next to him,  
22 yes.

23 MR. LEE: Thank you, your Honor.

24 Your Honor, is it possible to have a microphone placed  
25 in front of Mr. Meregildo? Is that electrically or

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1 mechanically possible at this time? If not, he will speak loud  
2 enough.

3 THE COURT: We have a microphone.

4 MR. LEE: Thank you, your Honor.

5 THE COURT: Yes. That's fine.

6 DEFENDANT MEREGILDO: For months --

7 THE COURT: You have to hold the microphone a little  
8 closer.

9 DEFENDANT MEREGILDO: For months I sit in my cell  
10 every day. I go through the trial transcripts every night to  
11 this day, and I try to convict myself for that murder that took  
12 place. But for some reason I can't. And everybody who took  
13 that stand sat there and lied. Everybody. I know what  
14 happened that night, and I wasn't involved.

15 After that day, that detective -- where he at?  
16 Harris, he tried to arrest me and get me to cooperate with him,  
17 and I wouldn't because I told him I wasn't involved in it.

18 I feel that the jury didn't make the right decision,  
19 and now I am being taken away from my family, from my son. But  
20 the fight is not over. I will appeal and I will be back home  
21 with my family.

22 I love you.

23 MR. LEE: On behalf of Mr. Meregildo, thank you, your  
24 Honor.

25 THE COURT: Mr. Dinnerstein, does your client --

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1 MR. DINNERSTEIN: I anticipate that my client will  
2 make a statement.

3 DEFENDANT COLON: I just want to apologize to my  
4 family. I love you all. I'm going to keep fighting my case.  
5 Don't count me out. And to my brothers understand I love you  
6 guys as well. Just keep the communication.

7 As far as the government, I just want to let them know  
8 that they can't judge what they don't understand. Like, where  
9 I'm from, everything ain't go -- like I wasn't put in a  
10 predicament to where I could succeed in life. I feel I'm still  
11 pleading my innocence in front of the Court. I'm going to  
12 appeal, and I will be home eventually, hopefully.

13 And justice is not served locking up generation after  
14 generation of black and Latino men. People will only do what  
15 they put themselves into because of the simple fact of the  
16 situation impresses.

17 But, like I said, I love you all, and I'm going to  
18 continue to fight my case and I'm also asking the judge, my  
19 lawyer forgot to ask you for a recommendation that I stay close  
20 to home so I can receive visits from my family.

21 That is all.

22 THE COURT: All right. Thank you, Mr. Colon.

23 I don't think your lawyer forgot.

24 DEFENDANT COLON: He --

25 THE COURT: Lawyers typically make that request after



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1 sentence is imposed.

2 DEFENDANT COLON: All right. Pardon me, your Honor.

3 THE COURT: It's fine.

4 Mr. Miedel.

5 MR. DINNERSTEIN: I'll take the heat, your Honor.

6 MR. MIEDEL: Yes, I believe my client wishes to make a  
7 statement.

8 DEFENDANT PIERCE: I would like to say sorry to my  
9 sister, my babe moms, and all that, what I put them through.  
10 But I'm innocent.

11 THE COURT: Thank you, Mr. Pierce. You may be seated.

12 At this time, we are going to take a short recess.  
13 Everyone is to remain seated until the defendants are escorted  
14 from the courtroom. We will take a ten-minute recess.

15 Please remain seated.

16 (Recess)

17 THE COURT: Mr. Aravind, I understand you have  
18 something further to report to the Court.

19 MR. ARAVIND: Yes, your Honor. We were just advised  
20 that another member of the one of the victim's families is  
21 here. She just came in as the Court was giving some remarks  
22 earlier. She would like to give a statement, your Honor. It's  
23 Ms. Leanne Alston, who is Delquan Alston's stepmother.

24 THE COURT: Very well.

25 She may approach the podium.

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Sentence

1 THE COURT: Please state your full name for the court  
2 reporter.

3 MS. ALSTON: My name is Leanne Alston, and I'm  
4 Delquan's stepmother. I just would like to say that Delquan  
5 was the sweetest guy that I have known. He came from the same  
6 streets that you guys came from, and he didn't go around  
7 shooting people. You guys, you stood up here and said you were  
8 sorry to your family but you didn't say you were sorry to us.

9 DEFENDANT COLON: I'm innocent.

10 MS. ALSTON: But we are still going through it. But  
11 you said sorry to them, but you couldn't say sorry to us. That  
12 hurts. I just wanted to say how could you say that to them but  
13 not to us.

14 I won't let my husband come up and here speak to you.  
15 I'm sorry. I can't talk anymore. He's just sitting up there  
16 like I'm innocent and swinging in his chair. He's not sorry.  
17 He's going to do this again and again.

18 THE COURT: Thank you, Ms. Alston.

19 Is there any other victim in the courtroom who wishes  
20 to be heard?

21 Do any counsel wish to make any further statements  
22 before the counsel imposes sentence?

23 Oh, I'm sorry.

24 MR. ALSTON: I'm Jaron Alston Delquan's father.  
25 Melvin, I watched you raise up with my son from sixth grade.

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Sentence

1 What happened, brother?

2 DEFENDANT COLON: I ain't kill your son.

3 MR. ALSTON: You didn't kill my son.

4 DEFENDANT COLON: Not at all.

5 MR. ALSTON: You got what you wanted. You got what  
6 you wanted. He's dead. He ain't going to prison. He's dead.  
7 His oxygen stopped. That's like, you know -- I wish you the  
8 best, man.

9 THE COURT: Is there anyone else in the courtroom who  
10 wishes to address the Court?

11 Does any counsel wish to be heard further before the  
12 Court imposes sentence?

13 MR. LEE: No, your Honor.

14 MR. DINNERSTEIN: I do, your Honor.

15 Your Honor, of course, my heart goes out to the Alston  
16 family, so does Melvin's. Melvin didn't kill Mr. Alston, and  
17 when the government brings in Devon Parsons to be sentenced  
18 before your Honor, I wonder whether they are going to ask the  
19 Alston family to show up then.

20 THE COURT: Mr. Miedel, do you wish to address the  
21 Court further?

22 MR. MIEDEL: No. Thank you, your Honor.

23 THE COURT: Anything further from the government?

24 MR. ARAVIND: No, your Honor.

25 THE COURT: This case represents the government's

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1 latest installment in a protracted effort to liberate a Bronx  
2 community from warring drug gangs.

3 The Courtlandt Avenue Crew was a violent racketeering  
4 enterprise that included GFC gang members. This violent  
5 enterprise flooded the Melrose and Jackson houses with crack  
6 cocaine and marijuana. Enterprise members considered those  
7 housing projects their turf and defended their territory by  
8 engaging in indiscriminate acts of mayhem, murdering drug and  
9 gang rivals, shooting at buildings, and injuring innocent  
10 civilians.

11 They waged a campaign of terror. This Court presided  
12 over a lengthy trial where the wreckage left behind by these  
13 defendants' criminal acts was exposed for everyone in the  
14 courtroom to see.

15 Surviving victims testified about the sheer terror  
16 they experienced when all they were trying to do was go about  
17 their everyday business.

18 Lives were changed forever, and others were simply  
19 snuffed out by the defendants and their coconspirators. The  
20 damage to society of the enterprise's actions cannot be  
21 overstated.

22 Their drug dealing affected countless mothers,  
23 fathers, and children. Their shootings terrified the entire  
24 community, and their murders extinguished the potential that  
25 their victims had to contribute to society.

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Sentence

1 This Court has heard from a number of family members  
2 today including Jaliyah, a young girl who misses her father.

3 The Court's received letters from friend and  
4 relatives. They brim with profound sadness and loss, loss of a  
5 son, loss of a brother, and loss of a father.

6 Mr. Correa's mother, Iris Perez, wrote, as Mr. Aravind  
7 read in Court, that she can no longer hear his voice when he  
8 walks through the door and not a day goes by when she doesn't  
9 think of her son. And Mrs. Perez points out that she took  
10 Mr. Pierce into her home when he had no place to go and gave  
11 him food, clothing and shelter.

12 Mr. Correa's sister asks how can her niece grow up to  
13 value friendship knowing her dad was set up to be murdered by  
14 someone she knew as his best friend. That question, of course,  
15 has no answer.

16 These heartfelt expressions of grief both in letters  
17 and in Court today are undoubtedly emblematic of many others  
18 that will not be communicated to the Court for any number of  
19 reasons.

20 Today this courtroom is filled with raw emotion and  
21 profound sadness because of the many families destroyed by the  
22 defendants' brutal and violent acts, and that includes families  
23 of victims and the defendants' own families who are here  
24 grieving today. The crimes for which these defendants have  
25 been convicted by a jury in this district, including murder,

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1 conspiracy to murder, racketeering, drug dealing, assaults and  
2 attempted murders, are senseless.

3 If only the clock could be turned back. But that's  
4 beyond the power of any of us. This Court is left with the  
5 somber duty of meting out just punishments for these heinous  
6 crimes, and this Court understands that none of what it does  
7 today can undo the damage done by these defendants. But what  
8 the Court does today is what the rule of law requires.

9 Now, the defendant Joshua Meregildo comes before this  
10 Court having been convicted of the most serious crimes  
11 imaginable: Murder, racketeering, drug dealing, firearms  
12 offenses and bank robbery.

13 The nature and circumstances of these offenses and the  
14 characteristics of the defendant require the imposition of  
15 serious punishment to reflect the gravity of the offenses, to  
16 promote respect for the law, and in the end to provide just  
17 punishment.

18 There is a compelling need for general deterrence of  
19 this kind of conduct and a paramount need to protect the  
20 public.

21 Mr. Meregildo's behavior during his current  
22 incarceration also demonstrates that he's not yet interested in  
23 rehabilitation. While in jail he threatens and interferes with  
24 staff and refuses to follow the rules.

25 Because of the specific nature of the crimes for which

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1 Mr. Meregildo stands convicted, he's forfeited his right to  
2 walk free among a civilized society.

3 The sad thing is Mr. Meregildo wasn't raised to be a  
4 murderer. His mother tried as hard as she could to provide for  
5 him. She work as a bus driver. She provided a loving  
6 environment, and allowed him to pursue his dreams of playing  
7 basketball.

8 And he demonstrated athletic prowess on the courts.  
9 He was recruited by a prep school in Connecticut, and he could  
10 have escaped the violence surrounding him. But Mr. Meregildo  
11 was attracted to a different lifestyle, the false glamour of  
12 guns and drugs, and those things pulled him away from a  
13 constructive and law-abiding life.

14 At trial, Mr. Meregildo's attorney argued to the jury  
15 that it was Mr. Meregildo's prowess on the basketball court,  
16 especially his jump shot, that earned him the nickname Killa,  
17 and perhaps that's true.

18 But his 2007 conviction for firearm possession on a  
19 basketball court suggests to this Court that basketball was  
20 just a hobby and being a gangster was his profession.

21 On July 31, 2010, Mr. Meregildo truly earned his  
22 nickname, together with Devon Parsons and Walter Aponte, he  
23 stalked Carrel Ogarro and waited for the opportune moment to  
24 kill him.

25 When that moment arrived, Mr. Meregildo pulled out a

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1 .380 pistol and tried to pick him off from a distance. But he  
2 had the safety on and the gun didn't fire, so he waited. And  
3 when the opportunity presented itself again, he took out his  
4 .380 and started blast away ending, Carrel Ogarro's life.  
5 Mr. Meregildo murdered Mr. Ogarro for money and because he  
6 believed Mr. Ogarro was a snitch and a threat to  
7 Mr. Meregildo's racketeering enterprise.

8 From the spring of 2010 through September 2011,  
9 Mr. Meregildo sold crack cocaine and marijuana, ran the  
10 enterprise for a time, and engaged in various acts of  
11 indiscriminate violence, including murder.

12 He also robbed banks. Since his incarceration, he's  
13 doubled down on his past decisions, replacing his leadership  
14 position in the Courtlandt Avenue crew with a leadership  
15 position in the Macbala Bloods, another violent gang.

16 He hasn't shown any remorse or demonstrated yet a  
17 desire to rehabilitate himself. The sad thing is that he's  
18 entirely capable of better things. He's bright, and he could  
19 have had a future, but he's forsaken it all.

20 This Court can only hope that at some point  
21 Mr. Meregildo changes and tries to realize the good potential  
22 that I believe is within him.

23 Melvin Colon also comes before this Court having been  
24 convicted of the most serious crimes imaginable: Murder,  
25 racketeering, drug dealing, firearms possession and assault.



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1           The nature and circumstances of these offenses and the  
2           characteristics of Mr. Colon require the imposition of very  
3           serious punishment to reflect the gravity of the offenses,  
4           promote respect for the law and provide for just punishment.  
5           And, of course, there is a compelling need for general  
6           deterrence of this kind of conduct and a paramount need to  
7           protect the public.

8           Because of the specific nature of these offenses,  
9           Mr. Colon has also forfeited his right to walk free among a  
10          civilized society.

11          Now, Mr. Colon wasn't raised to be a murderer either.  
12          While Mr. Colon lived at home, his mother provided a loving  
13          environment. He's also bright, and he too excelled at playing  
14          basketball.

15          In 2007, following his robbery conviction, he was  
16          incarcerated in a juvenile facility for a significant period of  
17          time. Even then his mother and family stood by his side.  
18          During that incarceration, Mr. Colon's counselors reported that  
19          "Melvin is an intelligent young man who should know no  
20          boundaries."

21          But Mr. Colon did not respond to his family's love or  
22          to the structure of a juvenile detention facility or to the  
23          efforts of his counselors. Instead, Mr. Colon rationalized his  
24          criminal behavior because that was what was expected in his  
25          neighborhood and continued his attraction to gang life.

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1 In 2008 one of his counselors observed that Mr. Colon  
2 showed no remorse for his past criminal behavior and that he  
3 expressed his intentions to repeat his criminal conduct, but  
4 just do it smarter so that he could avoid apprehension.

5 The counselor concluded by noting that Mr. Colon  
6 appeared to engage in criminal conduct solely for "thrill  
7 seeking and status."

8 Another report on Mr. Colon in 2010 noted that he  
9 wanted to transfer to an adult detention facility as soon as  
10 possible and that if he stayed at the juvenile facility he  
11 would cause a lot more trouble. He admitted that he was  
12 instrumental in orchestrating a group disturbance at Goshen and  
13 had no reservations about assaulting other residents.

14 Ultimately, Mr. Clone was released from an adult  
15 facility and returned home. Unfortunately, but predictably, he  
16 immediately returned to his criminal ways, unleashing his  
17 violence on those who lived in his neighborhood.

18 It is no surprise that his family had no moral suasion  
19 over him, because, as the counselor in 2010 noted, Mr. Colon  
20 "saw himself as an adult and in that regard did not feel  
21 obligated to defer any of his personal and social decision  
22 making to their wishes or counsel."

23 Mr. Colon's behavior during his current incarceration  
24 demonstrates that he's not yet decided to choose a path toward  
25 rehabilitation. While in jail, he assaults staff and inmates,

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1 uses drugs, and sets off false alarms, among other things.  
2 This Court truly hopes that Mr. Colon matures and comes to  
3 realize that there is more to life than a gang.

4 Just two years ago, on September 8, 2011, Mr. Colon  
5 Aubrey Pemberton and other racketeering members set out to  
6 exact revenge on a rival street gang, the YGs. Earlier in the  
7 day Messrs. Colon and Pemberton felt threatened by YG gang  
8 members, and in their warped thinking Messrs. Colon and  
9 Pemberton believed they had to respond with a show of force.

10 So, armed with a nine-millimeter pistol, they went to  
11 the Maria Lopez houses looking for YG gang members to kill.  
12 And when they found potential targets, Mr. Colon told  
13 Mr. Pemberton to shoot them.

14 When Mr. Pemberton opened fire, he missed his intended  
15 targets, but struck Mr. Jing Bao Jiang, an innocent delivery  
16 man who was only trying to deliver some Chinese food.

17 Mr. Colon posted on Facebook about this episode,  
18 making it clear that he wanted the world to know that he stood  
19 up to the YGs and didn't care what the collateral damage was.

20 Three years ago, on August 27, 2010, Mr. Colon  
21 demonstrated how cold and calculating he is. The then leader  
22 of the racketeering enterprise Terry Harrison, who was also  
23 known as T-Money had offered to pay Mr. Colon and Devon Parsons  
24 to eliminate someone Mr. Harrison viewed as a threat to the  
25 enterprise, Delquan Alston.

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1           At that time, Mr. Alston was targeted because he had  
2       been selling inferior narcotics which threatened the  
3       enterprise's drug business.

4           So Mr. Colon and Mr. Parsons met up with Mr. Alston on  
5       that warm summer night. Like good friends, Mr. Colon and  
6       Mr. Parsons talked and laughed with Mr. Alston, flirted with  
7       women, and drank with him into the early hours of the following  
8       morning.

9           But all of that was just an act, because Mr. Colon and  
10      Mr. Parsons knew why they had met up with Mr. Alston. At some  
11      point during that long night together Mr. Alston quipped that  
12      he needed money when the conversation turned to discussing a  
13      bounty that was on T-Money's head.

14          After the girls left and they all smoked some  
15      marijuana, Mr. Alston stepped off the walkway to relieve  
16      himself by the side of the building. While Mr. Alston was  
17      urinating with his back to Messrs. Colon and Parsons, Mr. Colon  
18      shot him in the head and he and Mr. Parsons emptied the  
19      40-caliber murder weapon into Mr. Alston's body.

20          Far from showing any remorse for this execution,  
21      Mr. Colon laughed it off as he and others were gathered around  
22      a computer at MDC looking at the trial discovery in this case.

23          Mr. Colon joked to other inmates that "out of all  
24      places we shot this guy in the dick."

25          Such a statement reveals the same lack of remorse

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1 observed by his juvenile counselors five years ago and an  
2 obsession with his gangster persona.

3 In his sentencing submission Mr. Colon asks this Court  
4 to think about whether Facebook is the real Melvin, and he  
5 suggests, like the screenplay of a recent movie, that if the  
6 Court pulled back the Facebook curtain and looked at the real  
7 Mr. Colon, he would see a good and decent young man.

8 But in real life, Mr. Colon is a murderer and a  
9 gangster and a drug dealer, and there's no difference between  
10 the Colon on Facebook and the Colon in this courtroom. He too  
11 has forfeited his right to walk among civilized society.

12 Finally, Earl Pierce comes before this Court having  
13 been convicted of extremely serious crimes: Conspiracy to  
14 commit murder, which resulted in a death, attempted murder,  
15 racketeering, drug dealing and firearms offenses.

16 The nature and circumstances of these offenses and  
17 Mr. Pierce's characteristics require the imposition of serious  
18 punishment to reflect the gravity of the offenses and promote  
19 respect for the law and to provide for a just punishment. His  
20 offenses were violent and protracted. He conspired to murder  
21 others engaged in gun battles on the street and sold drugs for  
22 the enterprise, and he was old enough and mature enough and  
23 smart enough to have chosen a different path, like his brothers  
24 and sisters did. But he didn't.

25 So there is, here again, a compelling need for general

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1 deterrence of this kind of conduct and a paramount need to  
2 protect the public from Mr. Pierce.

3 For his entire adult life he sold drugs, possessed and  
4 used firearms and engaged in violence. Time after time he was  
5 arrested and incarcerated, and time after time he was released  
6 and immediately returned to committing crimes. Prison did not  
7 deter him. In fact, his criminal activity escalated.

8 While he might, as his counsel argues, age out of  
9 committing future crimes, the only reliable indicator of what  
10 Mr. Pierce's future portends is what he's done in the past.  
11 That past shows that he is a violent and dangerous individual.

12 Mr. Pierce was an associate of the racketeering  
13 enterprise and dedicated to its cause.

14 On July 25, 2010, Pierce and T-Money learned that  
15 Jason Correa, an associate of a rival drug crew, were inside a  
16 building on their turf, so they decided to kill him. T-Money  
17 took Pierce's gun and Bernard Folks, another racketeering  
18 member, and they waited in a stairwell for Mr. Correa. T-Money  
19 walked up to Mr. Correa and shot him three times. And when he  
20 heard Mr. Correa rasping for breath, he snuffed out his life  
21 with a few more gunshots.

22 Mr. Pierce did not pull the trigger, but he conspired  
23 with T-Money to kill Mr. Correa, a rival narcotics dealer.  
24 T-Money used Mr. Pierce's gun, and Mr. Pierce spirited the gun  
25 away and hid it after the murder was done.

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1           When those shots rang out, building residents threw  
2 themselves on the floor closed their doors and tried to protect  
3 their children. But Mr. Pierce was cool, calm and collected.  
4 For T-Money and Mr. Pierce, it was mission accomplished.

5           And when a building resident dared to speak to the  
6 police about what she had seen and heard, Mr. Pierce labeled  
7 her a snitch and threatened to kill her. That courageous woman  
8 knew exactly what Mr. Pierce was capable of, but nevertheless  
9 testified at trial, and this Court commends her.

10           To the members of the Courtlandt Avenue Crew,  
11 including Mr. Pierce, murdering rivals or shooting at them was  
12 commonplace.

13           And in September 2010, that violent conduct resulted  
14 in the retaliatory killing of T-Money by drug rivals. The  
15 murder of T-Money catapulted Mr. Meregildo and Mr. Colon to the  
16 top of the racketeering enterprise, and it also led to  
17 Mr. Pierce's attempt to retaliate against the group he believed  
18 was responsible for T-Money's death.

19           Three years ago, on September 13, 2010, Pierce, armed  
20 with a nine-millimeter pistol, went with other racketeering  
21 members to kill their rivals. When Pierce found his intended  
22 targets, he opened fire and hit Tarean Joseph several times.

23           As Mr. Pierce later boasted to other enterprise  
24 members, he was on his way to finish the job when another rival  
25 came out of the building and shot at him. Not thinking about

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1 the collateral consequences, Mr. Pierce and his rival engaged  
2 in a shootout on a public street where any number of innocent  
3 people could have been shot or killed. Thankfully, no one was.

4 Looking at the 3553(a) factors, Mr. Pierce is old  
5 enough and mature enough to have chosen a different path. He's  
6 experienced with the criminal justice system, racking up 11  
7 prior convictions, including two drug felonies, and served  
8 lengthy prison sentences.

9 But it hasn't slowed him down. Taken alone, each of  
10 his crimes is heinous, but viewed together they demonstrate  
11 that at this moment he is a clear and present danger to  
12 civilized society.

13 Unlike Messrs. Meregildo and Colon, Mr. Pierce was  
14 acquitted of the crime of murder in furtherance of the  
15 racketeering enterprise, allowing this Court to exercise its  
16 informed discretion in fashioning a sentence.

17 Mr. Pierce's guideline range of 46 is off the  
18 sentencing guideline chart and appropriately reflects the  
19 gravity of his crimes. Among his coconspirators he stands  
20 alone as a career offender, with the maximum Criminal History  
21 Category of VI under the guidelines.

22 Aside from his coconspirators here, Mr. Pierce's  
23 conduct was more serious than every other defendant in this  
24 case except one, Kevin Pinero. Mr. Pinero pleaded guilty to  
25 the murder of William Shaw, another victim of the racketeering



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1 enterprise, as well as to racketeering and conspiracy to commit  
2 murder.

3 Because Mr. Pinero accepted responsibility for his  
4 acts, his total offense level was 40 and his Criminal History  
5 Category was IV. So Mr. Pinero's guideline range was 360 to  
6 life that was to be followed by a mandatory consecutive  
7 sentence of 360 months. After weighing the 3553(a) factors  
8 this Court sentenced Mr. Pinero to a total of 430 months' in  
9 prison.

10 Mr. Pierce did not murder Mr. Correa, but Mr. Correa  
11 is dead as a result of Mr. Pierce's participation in the  
12 conspiracy to murder rivals. Mr. Pierce personally shot  
13 Mr. Joseph and was on his way to finish the job when he got  
14 into a gun battle on the streets and was in the hierarchy of  
15 the racketeering enterprise that indiscriminately waged a  
16 campaign of terror on the community.

17 His total offense level is six levels higher than  
18 Mr. Pinero's, resulting in a guideline range of life in prison,  
19 and as a career offender with the highest criminal history  
20 category available. This Court makes these observations about  
21 Mr. Pinero in recognition of its responsibility under the  
22 3553(a) factors to avoid sentencing disparities.

23 So, viewing all of the 3553(a) factors in conjunction  
24 with the advisory guidelines, in the case of Mr. Pierce this  
25 Court believes that a sentence within the guideline range is

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1 more than is necessary to ensure that the ends of justice are  
2 served in this case.

3 So it's against this very sad backdrop that this Court  
4 is prepared to impose sentence on each of these defendants.

5 The crimes here are heinous, and each of them poses an  
6 extraordinary danger.

7 Mr. Meregildo, I would ask you to stand, sir, and I  
8 will impose sentence at this time.

9 Mr. Meregildo, it's my judgment, sir, that you be  
10 sentenced to a term of life imprisonment on Counts One, Two,  
11 Six, Thirteen, Fifteen, and Eighteen, and that you be sentenced  
12 to a term of 120 months concurrently on Count Five, and that  
13 you be sentenced to 60 months consecutive to all of these  
14 sentences on Count Twenty-Two.

15 In addition, although it is just an exercise, I'm  
16 imposing supervised release of five years on Counts One, Two,  
17 Thirteen, Fifteen, Eighteen and Twenty-two for indictment 11  
18 Cr. 576; three years on Count Five for indictment 11 Cr. 576  
19 and three years on Count One for indictment 11 Cr. 758, all to  
20 run concurrent, with one another.

21 I am also sentencing you on 11 Cr. 758 to 60 months  
22 concurrent with any other sentence, except Count Twenty-Two of  
23 11 Cr. 576, and imposing an order of restitution in the amount  
24 of \$3,750. Given that you are going to be incarcerated for the  
25 rest of your life, I am not going to impose any interest on the

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1 restitution payment. I am also imposing mandatory special  
2 assessments of \$800 on 11 Cr. 576 and \$100 on 11 Cr. 758.

3 With respect to the supervised release, you will be  
4 subject to all of the standard conditions of supervised release  
5 and the special condition that you submit your person,  
6 residence, place of business, vehicle or any other premises  
7 under your control to a search on the basis that your probation  
8 officer has a reasonable belief that contraband or other  
9 evidence of a violation of the conditions of release can be  
10 found. That search can be conducted at a reasonable time and  
11 in a reasonable manner, and your failure to submit to such a  
12 search may be grounds for revocation.

13 This, Mr. Meregildo, constitutes the sentence of this  
14 Court.

15 You may be seated, sir.

16 THE COURT: Mr. Colon, I would ask sir that you stand.

17 Mr. Colon, it is my judgment, sir, that you be  
18 sentenced to a term of life in prison on Counts One, Two,  
19 Eight, Thirteen, and Sixteen. Further, that you be sentenced  
20 to 120 months of imprisonment on Counts Seven and Eleven and  
21 240 months of imprisonment on Count Twelve, all to be served  
22 concurrent with your life imprisonment. And I sentence you to  
23 120 months consecutive to life on Count Twenty-One and 300  
24 months consecutive to life on Count Twenty-Two.

25 As with Mr. Meregildo, I am imposing a term of

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1 supervised release of five years on Counts One, Two, Eight,  
2 Thirteen, Fifteen, Sixteen, Twenty-One and Twenty-Two, and  
3 three years on Counts Seven Eleven and Twelve, all to run  
4 concurrent with each other and all subject to the standard  
5 conditions and the special condition that you submit to a  
6 search at any time as I have outlined with Mr. Meregildo.

7 I am also imposing a total of \$1,000 special  
8 assessment on you, \$100 on each count.

9 This constitutes the sentence of this Court,  
10 Mr. Colon.

11 You may be seated.

12 Finally, Mr. Pierce, I would ask that you stand.

13 Mr. Pierce, in this case, I have the ability to  
14 exercise some discretion, and I truly hope that you will be a  
15 different person as you grow older.

16 I am sentencing you, sir, to a total sentence of 600  
17 months of imprisonment. I'm sentencing you on Counts One, Two,  
18 Ten, and Thirteen to 180 months of imprisonment and on Count  
19 Three to 120 months of imprisonment, all those sentences to be  
20 concurrent, to be followed by a 120-month consecutive sentence  
21 on Count Twenty, and a 300-month consecutive sentence on Count  
22 Twenty-Two, for a total sentence of 600 months of imprisonment.

23 I'm going to impose a term of supervised release on  
24 you, specifically, five years on Counts One, Two, Thirteen,  
25 Twenty and Twenty-Two and three years on Counts Three and Ten,

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1 all to run concurrent to one another.

2 I impose all of the standard conditions of supervised  
3 release and the following special conditions:

4 First, that you submit your person, residence, place  
5 of business, vehicle or any other premises under your control  
6 to a search on the basis that your probation officer has a  
7 reasonable belief that contraband or other evidence of a  
8 violation of the conditions of your release may be found. That  
9 search can be conducted in a reasonable time and in a  
10 reasonable manner, and your failure to submit to such a search  
11 may be grounds for revocation.

12 So, upon your release from prison, you are to notify  
13 any other residents of the premises where you reside that those  
14 premises may be subject to search pursuant to this condition.

15 In addition, I'm going to require you to participate  
16 in a treatment program for drug and alcohol upon your release,  
17 to include testing, and I will require you to share in the  
18 expense of that program based on your ability to pay or the  
19 availability of third-party payments.

20 Finally, I'm going to impose the mandatory special  
21 assessment of \$700 on you, \$100 on each count of conviction.  
22 This, Mr. Pierce, constitutes the sentence of this Court.

23 You may be seated.

24 I advise each of you gentlemen that each of you have  
25 the right to appeal. I advise you further that if you cannot

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1 afford counsel, counsel will be provided to you free of cost.

2 Each of you have had splendid lawyers representing you  
3 throughout this matter, from the very first day before me  
4 through the trial and sentencing. Each of them has done an  
5 outstanding job in their submissions, and I am confident that  
6 they will advise you further regarding your appellate rights.

7 With respect to the requests on behalf of Messrs.  
8 Meregildo and Colon to be housed at facilities as close to the  
9 New York Metropolitan Area as possible, I will make that  
10 recommendation.

11 But, gentlemen, you need to understand that it is all  
12 up to the Bureau of Prisons, and it must be consistent with  
13 your security classification. And to the extent that you  
14 continue your gang affiliations, the possibility of that  
15 request being fulfilled by the Bureau of Prisons becomes more  
16 and more remote.

17 Are there any further applications?

18 MR. MIEDEL: Your Honor, I have the same request for  
19 Mr. Pierce.

20 THE COURT: I will include that recommendation.

21 MR. MIEDEL: Thank you.

22 THE COURT: I know I jumped the gun.

23 Are there any further applications at this time?

24 MR. ARAVIND: The government would move to dismiss the  
25 underlying indictments, your Honor.

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1 THE COURT: The government's application is granted.

2 Anything further, Mr. Lee?

3 MR. LEE: Nothing, your Honor. Thank you.

4 THE COURT: Mr. Dinnerstein?

5 MR. DINNERSTEIN: Nothing, your Honor.

6 MR. MIEDEL: Your Honor, I would just the indulgence  
7 of the marshals to be able to speak to my client for two  
8 minutes in the back. We were not allowed to speak to them  
9 earlier downstairs. I need to explain to him what the sentence  
10 means for two minutes.

11 THE COURT: There is a large number of people here.  
12 You will go downstairs, and I am sure you will be able to see  
13 him briefly down there. There's too much going on here in the  
14 courtroom.

15 This matter is concluded. Everyone is to remain  
16 seated until the defendants are escorted from the courtroom.

17 (Adjourned)